

U.S. Patent Appl. No.: 10/701,324
Atty. Docket No.: 71527,0003
Customer No. 35161

REMARKS

The restriction requirement of January 7, 2005 stated:

"This application contains claims directed to the multiple patentably distinct species of the claimed invention..

Applicant is required to identify multiple patentably distinct species and under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Currently, no claim is generic".

The Restriction Requirement appears to indicate that there is one invention, but does not identify what are considered to be the various species claimed.

During a telephone conference conducted June 1, 2005 between Examiner Sikder and John De Luca, Reg. No. 25,505 (the previous attorney), the Examiner indicated that it is the Applicants' responsibility to identify the various species, because they are in the best position to know what it is they are claiming.

However, the Applicants respectfully disagree. It is the Examiner who has the burden of identifying the alleged different species within the application. Once identified by the Examiner, the Applicants may then formulate an appropriate reply. Without this identification, the Applicants have no guidance as to formulating an appropriate election.

Under MPEP 809.02(a), the Examiner is required to "clearly identify each of the disclosed species, to which claims are restricted. The species are preferably identified as the species of figures 1, 2, and 3 or the species of examples I, II, and III, respectively. In the absence of distinct figures or examples to identify the several species, the mechanical means, the particular material, or other distinguishing characteristic of the species should be stated for each species identified. If the species *cannot be conveniently identified*, the claims may be grouped in accordance with the species to which they are restricted."

Further, MPEP 806.05(e) requires the Examiner to provide reasonable examples and recite material differences between, for example, the species.

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Further, MPEP 815 states that "(w)hen making a requirement every effort should be made to have the requirement complete."

Accordingly, the Applicants respectfully request that the Examiner identify the species from which the election is to be made. If no species are identified, then the Applicants respectfully traverse the applicability of the restriction requirement, and request withdrawal of the restriction requirement, since there is no undue burden for the Examiner to search the various embodiments disclosed with respect to forming a plurality of movable optical traps. (see MPEP 806.05(c)).

If the Examiner believes that there is any issue which could be resolved by a telephone or personal interview, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for any extension of time which may be required to maintain the pendency of this application, and any required fee for such an extension is to be charged to Deposit Account No. 04-1061.

Respectfully submitted,

Jean C. Edwards
Jean C. Edwards
Registration No. 41,728

DICKINSON WRIGHT PLLC
1901 L St., N.W. Suite 800
Washington, D.C. 20036
Telephone: 202/659-6946
Facsimile: 202/659-1559
Date: June 6, 2005

DC 71527-3 102773

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Pamela Cei
Pamela Cei